

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of

1998 Biennial Regulatory Review –  
Reform of the International Settlements  
Policy and Associated Filing Requirements

Regulation of International  
Accounting Rates

IB Docket No. 98–148

CC Docket No. 90–337

COMMENTS  
of the  
GENERAL SERVICES ADMINISTRATION

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## **Summary**

A system of regulations governing the payments to foreign carriers, return traffic volumes, international resale and similar factors was necessary when there was little competition in providing outbound and inbound international switched message services. With increasing competition on many international routes, the Commission has advanced a number of proposals to modify its policy and associated rules in an effort to encourage rate reductions and motivate innovation.

The Commission's proposals hold promise for stimulating more competition if — and only if — there is currently a strong competitive base. Therefore, GSA urges the Commission not to abandon the existing regulations with respect to traffic interchanged with foreign carriers that are dominant in their markets, even if the market is somewhat “competitive.” Moreover, GSA urges the Commission to employ conservative standards in determining whether or not to relax the requirements. Each case should be evaluated on a carrier-by-carrier and route-by-route basis.

GSA recommends that the Commission continue to assess whether additional routes should be exempted from the settlement rules, and whether previously granted exemptions should be canceled. To perform this task, the Commission needs data to display the concentration among providers of outbound and inbound message services on each route. Therefore, GSA believes that the Commission should continue to obtain data on traffic volumes.

The proposals to relax flexible settlements arrangements have little or no apparent benefits in fostering competition. GSA recommends that these proposals not be implemented, and also that the present rules concerning international resale not be changed unless the Commission institutes compensating competitive safeguards.

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**COMMENTS  
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GENERAL SERVICES ADMINISTRATION**

The General Services Administration (“GSA”) submits these Comments on behalf of the customer interests of all Federal Executive Agencies (“FEAs”) in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) released on August 6, 1998. The NPRM invites comments and replies on changes to the Commission’s International Settlements Policy (“ISP”) and associated rules.

**I. INTRODUCTION**

Pursuant to Section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481(a)(4), GSA is vested with the responsibility to represent the customer interests of the FEAs before Federal and state regulatory agencies. The FEAs require a wide array of interexchange and local telecommunications services throughout the nation. From their perspective as end users, the FEAs have consistently supported the Commission’s efforts to bring the benefits of competitive markets to consumers of all telecommunications services.

The Telecommunications Act of 1996 directs the Commission to conduct a biennial review of all regulations issued under the Communications Act that apply to the operations of any firm providing telecommunications services.<sup>1</sup> In particular, this legislation directs the Commission to determine whether such regulations are still required in view of the current level of competition between the providers of any telecommunications service.<sup>2</sup>

The NPRM responds to these statutory requirements for biennial review as they relate to the rules and regulations concerning the settlement procedures employed for international messages.<sup>3</sup> In the NPRM, the Commission's proposes changes in its rules to eliminate some requirements that may impede rate reductions or discourage innovation pertaining to international services. The NPRM discusses four potential types of changes in the Commission's international settlements policies and rules.

First, the Commission proposes to discontinue the requirements on U.S. carriers to comply with the present settlements procedures with respect to many foreign carriers based in nations that are members of the World Trade Organization ("WTO"). Second, the Commission proposes to allow carriers to obtain authority to enter into flexible settlements arrangements affecting less than 25 percent of the traffic on a particular route without identifying the foreign correspondent or disclosing the terms and conditions of the agreement.

Third, the Commission suggests that it may decide to modify its rules governing resale as a mechanism for putting increased pressure to lower settlement rates.

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amending the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* ("Telecommunications Act"), at § 161.

<sup>2</sup> *Id.*, § 161(a)(2).

<sup>3</sup> NPRM, para. 2.

Fourth, the Commission suggests that it may decide to modify existing competitive safeguards, particularly if the rules concerning resale are liberalized.

The Commission seeks comments and replies addressing these proposals and related considerations.

**II. THE COMMISSION SHOULD DISCONTINUE SETTLEMENTS REQUIREMENTS FOR TRAFFIC INTERCHANGED WITH FOREIGN CARRIERS LACKING MARKET POWER.**

**A. Specific formulas were required when there was little competition among foreign carriers.**

Through a series of decisions over the past 62 years, the Commission has regulated the participation by U.S. carriers in bilateral rate negotiations with foreign carriers.<sup>4</sup> The policy was important to prevent foreign monopoly carriers from whipsawing U.S. carriers, with harmful impacts on U.S. ratepayers.

The present rules require: (1) equal division of accounting rates between the U.S. carrier and the foreign carrier; (2) nondiscriminatory treatment of U.S. carriers; and (3) proportionate return of inbound traffic.<sup>5</sup> To ensure compliance with the rules, all accounting rate agreements must be filed with the Commission and made available to the public.<sup>6</sup> Moreover, the Commission's International Bureau may reject an agreement if its terms and conditions do not serve the public interest.<sup>7</sup>

These policies were successful in protecting U.S. carriers and consumers when a carrier with a monopoly position in a foreign market could exploit its position as the only means of terminating outbound traffic from the U.S. and the only source of return

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<sup>4</sup> *Id.*, para. 6.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

traffic from that country.<sup>8</sup> However, the NPRM suggests that the policies which afforded this protection in the past are likely to inhibit competition in the current environment. They may inhibit competition for at least three reasons.

First, uncertainty regarding settlement rates paid by competing U.S. carriers encourages these carriers to bargain for the lowest possible settlement rate to give them a competitive advantage among end users in this country.<sup>9</sup> If the rate negotiated by one carrier is available to all other carriers, as under the existing regulations, the U.S. carrier probably has far less incentive to negotiate aggressively.

Second, the proportionate return requirement in the regulations discourages new U.S. carriers from entering the market.<sup>10</sup> Since the new entrants will be carrying little outbound traffic at the start, they will also receive a small inbound share according to the present rules.

Third, settlement rates are a very significant component of the costs of providing international switched services.<sup>11</sup> The fact that each carrier knows a major component of each competitor's costs has a chilling effect on competition based on price.

Considering all of these factors, the Commission proposes to discontinue the requirements on U.S. carriers to comply with the settlements formulas concerning traffic interchanged with (1) all carriers in WTO member nations for which the Commission has authorized International Simple Resale ("ISR") or (2) any other carrier in a WTO member nation that lacks significant market power.

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<sup>8</sup> *Id.*, para. 8.

<sup>9</sup> *Id.*, para. 9.

<sup>10</sup> *Id.*, para. 10.

<sup>11</sup> *Id.*, para. 11.

**B. Settlements requirements should be eliminated only for foreign carriers that do not have significant market power at the present time.**

Civilian and military agencies of the Federal government have substantial requirements for voice and data telecommunications between the U.S. and other nations. Therefore, GSA has a major interest in steps that will reduce the prices of international telecommunications services and provide more service alternatives for all end users.

The steps proposed in the NPRM will eliminate many pricing and traffic constraints. GSA believes that they hold promise for stimulating more competition if — and only if — there is a now a strong competitive base. Therefore, GSA strongly urges the Commission not to change regulations with respect to traffic interchanged with foreign carriers that are dominant in their home markets, even if the market, taken as a whole, is considered somewhat competitive.

The NPRM emphasizes that the WTO Basic Telecom Agreement has “accelerated the global trend toward privatization and liberalization of telecommunications markets.”<sup>12</sup> At the start of this year, 28 countries were committed to introducing competition for telecommunications services as of January 1, 1998.<sup>13</sup>

Some international markets are far from competitive, but GSA acknowledges that many nations have taken decisive steps to promote competition. The WTO reports that it had 120 members as of mid-1996, with an additional 30 counties in the process of accession.<sup>14</sup> The 28 countries that are committed to introducing competition thus represent roughly one-quarter of the total WTO membership.

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<sup>12</sup> *Id.*, para. 15.

<sup>13</sup> *Id.*

<sup>14</sup> U.S. Department of State, *The World Trade Organization and U.S. Trade Policy*, June 14, 1996, <http://arc.org.tw/trade/ustp.htm>.



Furthermore, it is likely that significant competition is yet to develop for international voice and data services to and from nations with recent commitments. In fact, commitments to international competition for some nations will be actually effective or phased-in during the years 1999 to 2004.

GSA urges the Commission to be cautious in determining whether or not settlements requirements should be relaxed. Each case should be evaluated and decided on a carrier-by-carrier and route-by-route basis. GSA urges the Commission to employ conservative standards for gauging the extent of competitive development. As one possibility, the NPRM suggests that the Commission might apply a 50 percent market share as a presumption of dominance in deciding whether to continue current settlement policies.<sup>15</sup> GSA urges the Commission to adopt a standard that is at least this stringent.

**C. Carriers should still report traffic volumes.**

GSA recommends that the Commission continue to assess whether additional routes should be exempted from the settlement rules, and whether previously granted exemptions should be canceled. To perform this task, the Commission needs data on the concentration among service providers of outbound and inbound messages on each route. Therefore, GSA believes that the Commission should continue to obtain data on traffic volumes for all routes, even if pricing information is not made available. Although disclosure of prices may impair competition, release of information concerning traffic volumes to the Commission should have little if any negative effect on the development of competition.

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<sup>15</sup> NPRM, para. 22.

**III. THE COMMISSION'S PROPOSALS TO PERMIT ADDITIONAL  
"FLEXIBLE SETTLEMENTS" ARRANGEMENTS HAVE NO  
APPARENT BENEFITS IN FOSTERING COMPETITION.**

Under the current rules, a U.S. carrier may seek to employ a flexible pricing arrangement with a foreign carrier by filing a petition for declaratory ruling with the Commission.<sup>16</sup> Carriers must also file a copy of such settlement arrangements with the Commission.<sup>17</sup>

The NPRM proposes to relax the rules concerning flexible settlement arrangements. For alternative arrangements between unaffiliated carriers affecting less than 25 percent of the inbound or outbound traffic on a route, the NPRM proposes to allow U.S. carriers to petition for approval of an agreement for flexible pricing without filing a summary of its terms and conditions, or even identifying the foreign correspondent.

GSA does not believe that this proposal will improve the status of competition on international routes. The proposal is not tied to the status of competitive development, as are the proposals for relaxation of settlements in transactions with non-dominant carriers, which were discussed previously.

Relaxation of flexible pricing rules would not motivate administrations in other countries to authorize multiple carriers, nor would they encourage more U.S. carriers to participate in providing service on any route. The primary beneficiaries are the incumbent carriers, so the steps would have little positive impact in promoting more competition or lower prices.

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<sup>16</sup> *Id.*, para. 32.

<sup>17</sup> *Id.*

**IV. THE PRESENT RULES CONCERNING INTERNATIONAL  
RESALE SHOULD BE RELAXED ONLY IF THE COMMISSION  
INSTITUTES COMPETITIVE SAFEGUARDS.**

The Commission's ISR rules permit U.S. carriers to carry international switched message traffic over lines designated for private line traffic (but nevertheless connected to the public switched network) without the requirement for settlements at the prescribed accounting rate and without the restriction that inbound traffic be subject to proportionate return calculations.<sup>18</sup> This procedure has presumably allowed U.S. carriers to terminate much of their traffic in foreign markets at rates significantly lower than the bilaterally-agreed settlement rate.<sup>19</sup> Therefore, the procedure should be exerting downward pressure on accounting rates, and promoting lower charges for all international telecommunications services to end users.

Currently, U.S. carriers may engage in ISR only on routes to a WTO member country where 50 percent of the traffic is settled at or below benchmark rates established by the Commission, or to a WTO member country that permits equivalent resale opportunities.<sup>20</sup> For service to non-WTO member countries, ISR is authorized only where 50 percent of the traffic is settled at or below benchmark rates, and if the overseas administration permits equivalent resale opportunities.<sup>21</sup>

The Commission suggests that these restrictions might be liberalized. The NPRM outlines several alternatives. For example, ISR might be permitted for a specifically designated amount of traffic on routes for which it is not now permitted at

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<sup>18</sup> *Id.*, para. 12.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

all.<sup>22</sup> Or, the entire ISR requirement might be abolished when international markets as a whole have become sufficiently competitive, as measured by the percentage of routes meeting the current ISR criteria.<sup>23</sup>

GSA concurs with any procedure that will result in lower charges for inbound or outbound international message traffic. However, GSA is concerned that removal of all limitations on ISR may lead to "one-way bypass" of the accounting rate system, where private lines are used only for inbound traffic and outbound traffic remains subject to the accounting rate system. As the Commission notes, this process could lead to increased prices for consumers in the U.S.<sup>24</sup>

GSA believes that the reporting requirements and other regulations governing relationships with foreign carriers should be extended if the ISR rules are relaxed. The present requirement for settlement of a majority of traffic at benchmark rates has apparently placed an effective obstacle to "one-way bypass." Moreover, some countries that exchange a large volume of telecommunications traffic with the U.S., such as the United Kingdom and Germany, have been sufficiently motivated to allow ISR for their own carriers. Consequently, GSA recommends that some procedures to check for market distortions be maintained if the Commission acts to liberalize the ISR rules in any way.

The Commission has adopted the standard that market distortion is presumed to exist if the ratio of inbound-to-outbound traffic changes by ten percent or more over two successive reporting periods.<sup>25</sup> This standard should be continued. Moreover, if a

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<sup>22</sup> *Id.*, para. 38.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*, para. 37.

<sup>25</sup> *Id.*, para. 38.

significant shift is indicated and if it appears that rates ultimately paid by end users are not declining for a particular route, GSA urges the Commission to reestablish the currently existing controls for that route.

**V. THE RULE PROHIBITING "SPECIAL CONCESSIONS" SHOULD NOT BE DISCONTINUED.**

The Commission's "No Special Concessions" rule prohibits U.S. international carriers from "agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. . . ." <sup>26</sup> The NPRM seeks comments on whether to maintain this rule if resale requirements are liberalized.

GSA recommends that the Commission continue the "No Special Concessions" rule because it generally benefits end users. The rule prohibits acceptance of wide variety of exclusive arrangements from a foreign carrier that possesses market power. The scope of the potentially prohibited arrangements is wide — encompassing arrangements relating to operating agreements, interconnection of international facilities, and private line provisioning and maintenance, as well as the quality of service. <sup>27</sup>

Conditions which give all carriers equal status in reaching operating agreements and negotiating interconnection arrangements will benefit end users. Also, as end users of voice and data services, the FEAs are sensitive to the importance of preventive maintenance, corrective maintenance, and high service quality. Furthermore, there is no demonstrated advantage at all for end users to

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<sup>26</sup> 47 C.F.R. § 63.14(a)(1998). and NPRM, para. 40.

<sup>27</sup> NPRM, para. 40.

discontinuance of the "No Special Concessions" rule. For these reasons, GSA urges the Commission to continue this rule in its present form.

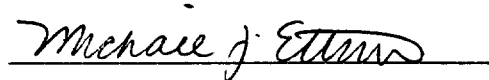
## VI. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations concerning settlements procedures for international telecommunications set forth in these Comments.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Comments of the General Services Administration" were served this 16th day of September, 1998, by hand delivery or postage paid to the following parties.

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